83-1637

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

WILLIE L. DRAPER,

Petitioner,

vs.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR CO., WOODHAVEN STAMPING PLANT; AND FRANK DOYLE

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIE L. DRAPER
P.O. BOX 15540
DETROIT, MICHIGAN 48215
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QUESTIONS PRESENTED FOR REVIEW

Was the granting of summary judgment based on laches, statute of limitations, lawful, where, time a material issue of fact, disputed less than three in issue Appendixes A and B.

Further, was it "constructive contempt" by non-compliance with court's subpeona, what is fair procedure?

Is it "denial" of a meaningful opportunity to be heard to grant motion not in procedural compliance with rules and thereby effecting a substantial right VII Amendment to the United States Constitution?

Was substantial justice rendered where affidavits were made in bad faith, no discovery or cross examination of parties making affidavits and Court asserting good faith of union?

Was the acts of the Respondent union (conspiracy) a breach of duty of fair representation?

Is continuing racial discrimination against minorities (blacks) a breach of contract by Respondents and is there remedy under Title VII of the 1964 Civil Rights Act?

What is the requirements of the settled principle of "due process"? Note United States Court of Appeal Opinion (1978); and Appendixes E and B.

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Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT

The Petitioner, WILLIE L. DRAPER, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on 12 December 1983.

QUESTIONS PRESENTED

Was the granting of summary judgment based on laches, statute of limitations, lawful, where, time a material issue of fact, disputed less than three in issue Appendixes A and B.

Further, was it "constructive contempt" by non-compliance with court's subpeona, what is fair procedure?

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What is the requirements of the settled principle of "due process"? Note United States Court of Appeal Opinion (1978); and Appendixes E and B.

OPINION BELOW

The Court of Appeals entered its Memorandum decision affirming the Summary Judgment granted the respondent by the Honorable Judge Ralph B. Guy in the United States District Court, Eastern District of Michigan, Southern Division; and denying petitioner motion for Injunctive Relief copies herewith attached.

JURISDICTION

On 12 December 1983, the Court of Appeals entered judgment affirming the

Summary Judgment on behalf of the respondents granted in the District Court. The jurisdiction of this court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitutional Amendments VII, XIII, XIV.

STATEMENT OF THE CASE

An appeal of the Summary Judgment based on the doctrine of laches. Plaintiff-Appellant alleges racial discrimination by the Defendants-Appellees his Union (UAW) and Employer, Ford Motor Company in violation of Title VII of Civil Rights Acts of 1964 as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. 20003, 29 U.S.C. 401 Section 610, 29 U.S.C. 401 Section 2, 29 U.S.C.A. 411, 29 U.S.C.A. 412, 29 U.S.C.A. 185, 42 U.S.C. Section 1985, 42 U.S.C. Section 1983, Zamora v.

Massey-Ferguson, 336 F.Supp. 588 (1972), Patrick v. I.D. Packing Company, Inc., 308 F.Supp. 821 (1969), Lummus v. N.L.R.B., 339 F.2d 728 (1964) and Vica v. Sipes, 386 U.S. 172 (1966).

REASON FOR GRANTING THE WRIT

Petitioner filed the timely complaint on 4/12/74. The complaint was within the filing dates required by the statute. The E.E.O.C. failed to mail the Right To Sue letter until requested by the Appellant-Petitioner in 1982.

This case has been in the Federal Court and State Courts until 8/31/79.

Dismissed 8/31/79 and refiled under Title VII 4/19/82.

Petitioner served the Respondents with Subpeonas to appear on December 2, 1982. Respondents failed to appear as ordered by subpoena. For oral deposition petitioner relies on Equal Employment Opportunity Commission v. Mississippi

College cite as 626 F.2d 477 (1980). EEOC sought enforcement of a subpoena issued in connection with its investigation of a charge of discrimination filed against a college owned, controlled and operated by a religious institution. The United States District Court for the Southern District of Mississippi, William Harold Cox, J., 451 F. Supp. 564, denied enforcement, and EEOC appealed. The Court of Appeals, Charles Clark, Circuit Judge, held that: (1) white female could not charge college with discriminating against blacks without establishing that she could satisfy standing requirements of Article III to bring court action against it under Title VII; (2) Title VII had no application to employment practices of religious educational institution that discriminated on basis of religion regardless of whether religious discrimination was pretext for

some other type of discrimination; (3) relationship between religious educational institution and its faculty was not exempt from coverage of Title VII; and (4) application of Title VII to college violated neither the establishment clause nor the free exercise clause of the First Amendment. 626 F.2d 482 Rogers v. EEOC, 454 F.2d 234 (5th Cir. 1971), cert. denied, 406 U.S. 957, 92 S. Ct. 2058, 32 L.Ed. 2d 343 (1972), Judge Goldberg, without the concurrence of either of the two other panel members, concluded that an employee could charge her employer under Section 703 with discrimination that, although not directed towards her, had the effect of creating a "working environment heavily charged with discrimination. Judge Goldberg observed that Section 703(a)(1) of Title VII prohibits discrimination with respect to "compensation, terms, conditions or privileges of employment" and reasoned

that Congress intended to encompass within Title VII subtle discriminatory practices that, while not directed toward the charging employee, affected the employee by creating a working environment "polluted" with discrimination. Id. at 237-39.

CONCLUSION

To summarize our holdings, we conclude that (1) Summers cannot charge the College with discriminating against blacks without establishing that she could satisfy the standing requirements of Article III of the Constitution to bring a court action against it under Title VII; (2) Section 702 of Title VII, excludes from the application of the Act any employment practices of a religious educational institution that discriminate on the basis of religion regardless of whether the religious discrimination is a pretext for some other type of discrimination; (3) McClure v. Salvation Army,

exempts from the coverage of Title VII only the relationship between a church and its minister and does not apply to the relationship between a religious educational institution and its faculty; and (4) the application of Title VII to the College violates neither the establishment clause of the free exercise clause of the First Amendment. We vacate the district court's findings of fact, its conclusions of law, and its initial opinion and remand for further proceedings consistent with this opinion. We specifically note that on remand the district court should determine whether Summers' charge of race discrimination was timely filed and should allow the parties to present further evidence demonstrating which employment practices of Mississippi College are exempt from the coverage of Title VII under Section 702 as construed by this opinion. We leave for resolution by the district court on remand the question

of what portions of the EEOC's subpoena should be enforced. 329 U.S. 495 Hickman v. Taylor, as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues. Thus, civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.

For the foregoing reasons, petitioner Willie L. Draper respectfully requests that a writ of certorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

Willie L. Draper
WILLIE L. DRAPER

P.O. Box 15540
Detroit, Michigan 48215
Telephone: (313) 933-6953

DATED: 2 April, 1984.

APPENDIX A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

OPERATION P.U.S.H: METROPOLITAN DETROIT (PEOPLE UNITED TO SAVE HUMANITY) AN UNINCORPORATED ASSOCIATION,

and

WILLIE DRAPER, JAMES ELLISON, DELLA HILL, DAVE JEMISON, LEROY KELKER, CHARLES McWILLIAMS, LEON POLITE, JEROME RANDALL AND BIRK WALKER, ON BEHALF OF THEMSELVES AND ON BEHALF OF THE CLASS OF PERSONS SIMILARLY SITUATED,

Plaintiffs,

vs.

FORD MOTOR CO. (WOODHAVEN STAMPING PLANT), A DELAWARE CORPORATION,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 387, AN UNINCORPORATED VOLUNTARY ASSOCIATION,

Defendants.

Wayne County Circuit Court
Civ. Act. No. 77-705367

U.S. Dist. Court
Civ. Act. No. 77-70620

Filed James Kilgen
Wayne County Clerk, Mar. 15, 1977
Frank G. Curry

Butzel, Long, Gust, Klein & VanZile
by: John B. Weaver (P22061)
and: Donald B. Miller (P23417)
1881 First National Building
Detroit, Michigan 48226
(313) 963-8142

Attorneys for Defendant
Ford Motor Company

NOTICE OF FILING Joinder of Defendant Ford Motor Company in removal petition of Defendant, International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) Local 387.

APPENDIX B

FILE WITH ASSIGNMENT CLERK ONLY

Praecipe For Motion and Order/Judgement

WILLIE DRAPER, et al, Plaintiffs,	The Circuit Court for the County of Wayne, State of Michigan
vs.	
FORD MOTOR COMPANY AND INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 387, Defendants.	Civil Action No. 77-705 367 CZ

TO THE ASSIGNMENT CLERK: Please place Defendant Ford Motor Company's renewed Motion to Dismiss For Failure to Prosecute on the motion calendar for (Date) Friday, August 31, 1979 at 2:00 p.m. This motion is to be heard by Judge John D. O'Hair

TO COURT CLERK: Have the following Order/ Judgment completed and signed by Judge and check 1 or 2 below, whichever is applicable

ORDER/JUDGMENT

Dated: August 31, 1979

/ / 1. IT IS HEREBY ORDERED that the aforesaid motion be and the same is hereby denied

/X/ 2. IT IS HEREBY ORDERED that the aforesaid motion be and the same is hereby granted, AND IT IS FURTHER ORDERED AND ADJUDGED Dismissal without prejudice

Filed James R. Killeen, Wayne County Clerk

August 31, 1979. Circuit Judge John D. O'Hair

Approved as to Form and Substance
By Counsel for Donald B. Miller
Defendant's Attorney

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE L. DRAPER,

Plaintiff,

vs.

Civil Action No.
82-71392

UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT; AND FRANK DOYLE,

Defendants.

ORDER GRANTING DEFENDANT'S
MOTIONS FOR SUMMARY JUDGMENT

This matter is before the court on Defendant's Motions For Summary Judgment. The Court has reviewed the motion and briefs filed in support thereof and in opposition thereto and, in accordance with the bench opinion rendered following oral arguments of the parties on December 22, 1982;

IT IS ORDERED that Defendants' Motion for Summary Judgment are hereby granted.

RALPH B. GUY, JR.
United States District Judge

DATED: Dec. 27, 1982. By: Mary A. Evers

APPENDIX E

NO. 83-1067

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED: December 12, 1983
John P. Hetlman, Clerk

WILLIE L. DRAPER,

Plaintiff-Appellant,

vs.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY; FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT; AND FRANK DOYLE,

Defendant-Appellees.

BEFORE: LIVELY, Chief Judge; JONES, Circuit Judge; and CELEBREZZE, Senior Circuit Judge

This pro se plaintiff requests the Court to issue an injunction ordering several union officials to cease and desist their harassment and discriminatory actions directed against the plaintiff. The plaintiff, an employee of the Ford Motor Company, is appealing from a summary judgment awarded in the defendants' behalves after

hearing was conducted before Judge Guy on plaintiff's amended complaint filed under 42 U.S.C. §§1981, 1983 and 1985(3); 29 U.S.C. §185; 29 U.S.C. §§ 401, 411, 412 and 530, and Title VII.

The plaintiff raised many allegations in his amended complaint which was in excess of one hundred paragraphs relating to his employment with Ford and his relationship with the union between the years 1974 and 1978. He primarily complained that he was not given a fair amount of overtime work which he was entitled to while he was an elected committeeman in 1974. Plaintiff also claimed that a union committeeman assaulted him in March of 1974 when he complained about the lack of overtime work. Plaintiff raised many other charges relating to wrongful disciplinary measures, denial of promotions, the theft of his car, denial of free speech at union meetings, distribution of defamatory literature, improper assignments of work, improperly held

elections and denial of counsel at grievance hearings.

Upon a careful review of the district court record, especially of the transcript of the hearing conducted on the defendants' motions for summary judgment, this Court concludes that the district court properly entered summary judgment for the defendants as there is ample support for the entry of the judgment in their favor even while the Court construes the evidence in a light favorable to this pro se plaintiff. Bouldis v. U.S. Suzuki Motor Corp., 711 F.2d 1319, 1324 (6th Cir. 1983); Smith v. Pan Am World Airways, 706 F.2d 771, 773 (6th Cir. 1983) (Per Curiam). The Plaintiff's §1983 claim was properly denied because he utterly failed to show that the defendants acted under color of state law. Coffy v. Multi-County Narcotics Bureau, 600 F.2d 570, 579 (6th Cir. 1979). His §1985(3) claim was also properly dismissed as allegations

supporting a §1985(3) claim of employment discrimination may only be considered under Title VII. Great American Fed. S. & L. Assn. v. Novotny, 442 U.S. 366 (1979). Plaintiff's claims as brought under 29 U.S.C. §185 and 42 U.S.C. §1981 were also dismissed for being time-barred under the applicable statute of limitations. Regardless of whether the six month time limitation contained in the NLRA or the three year time limitations applicable under Michigan state law is applied in this case, the plaintiff's §185 claim is time-barred; and his §1981 claim is absolutely time-barred under the three year statute of limitations which has been held to govern the timeliness of civil rights complaints. Geromette v. General Motors Corp., 609 F.2d 1200, 1201 (6th Cir. 1979). The plaintiff was also required to exhaust his internal union remedies before asserting his claims under the Labor Management Reporting and

Disclosure Procedure Act, 29 U.S.C. §401. See 29 U.S.C. §411(a)(4); Stelling v. IBEW, Local 1547, 587 F.2d 1379, 1389-1390 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979). Finally, the district court also reasonably and cautiously applied the doctrine of laches to bar plaintiff's Title VII claims in this case. The court properly considered unavailability of witnesses, changed personnel, and loss of pertinent records in its determination that the defendants would suffer undue prejudice if plaintiff were allowed to pursue his Title VII claims. Abermarle Paper Co. v. Moody, 422 U.S. 405 (1975); EEOC v. Dresser Industries, Inc., 668 F.2d 1199 (11th Cir. 1982). The court also did not abuse its discretion in restricting plaintiff's discovery until after it could rule on the defendants' summary judgment motions.

For these reasons, this panel unanimously agrees that oral argument is not necessary

in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The plaintiff's motion is, accordingly, denied and the district court's judgment is hereby affirmed pursuant to Rule9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk